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Nos. 87-826, 87-1101

Supreme Court, U.S.
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In The
Supreme Court of the United States
October Term, 1987

JEROME F. GOLDBERG, ROBERT McTIGUE and GTE SPRINT COMMUNICATIONS CORPORATION,
Appellants,

v.

ROGER D. SWEET, Director of the Illinois Department of Revenue, and JEROME COSENTINO, Treasurer of the State of Illinois,
Appellees.

On Appeal from the
Supreme Court of Illinois

JOINT APPENDIX

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Appeals Docketed November 20, 1987 and December 31, 1987
Probable Jurisdiction Noted February 22, 1988

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Circuit Court of Cook County, Illinois

Aug. 13, 1985 – Plaintiffs' class action complaint for declaratory judgment, injunctive relief, accounting and other relief filed in Circuit Court of Cook County, Illinois, Chancery Division, alleging that the Illinois Telecommunications Excise Tax Act ("Illinois Tax Act") is unconstitutional under the Illinois and U.S. Constitutions.

Sept. 24, 1985 – Answer of defendant Electronic Office Centers of America filed.

Sept. 27, 1985 – Answer of defendant J. Thomas Johnson, Director of the Illinois Department of Revenue, filed.

Sept. 27, 1985 – Answer of defendant Allnet Communications Services, Inc. filed.

Oct. 7, 1985 – Motion to dismiss of defendant Satellite Business Systems filed.

Oct. 8, 1985 – Answer and verified counterclaim (cross-claim) of defendant GTE Sprint Communications Corporation for injunctive, declaratory and other relief filed, the counterclaim (cross-claim) alleging that the Illinois Tax Act is unconstitutional under the Commerce Clause of the U.S. Constitution.

Oct. 9, 1985 – Stipulation between GTE Sprint Communications Corporation and the Illinois Department of Revenue and the Illinois State Treasurer agreeing to entry of an order for maintenance of GTE Sprint Communications Corporation's tax payments under the Illinois Tax Act, and those of its customers, in protest fund.

Oct. 29, 1985 – Agreed order for injunction between GTE Sprint Communications Corporation and Illinois Department of Revenue and Illinois State Treasurer entered, ordering that tax payments by GTE Sprint and its customers under the Illinois Tax Act are to be maintained

in the protest fund, pursuant to the Money Disposition Act, pending final resolution of the lawsuit.

Nov. 8, 1985 – Answer of defendant TDX Systems, Inc. filed.

Nov. 12, 1985 – Answer and verified counterclaim of defendant MCI Telecommunications Corporation for injunctive, declaratory and other relief filed.

Nov. 12, 1985 – Answer of defendant American Telephone and Telegraph Company filed.

Nov. 14, 1985 – Emergency motion for temporary restraining order or preliminary injunction filed by defendant and counter-plaintiff MCI Telecommunications Corporation.

Nov. 14, 1985 – Order for preliminary injunction entered ordering that tax payments by MCI Communications Corporation and its customers are to be maintained in the protest fund, pending final resolution of the lawsuit.

Nov. 14, 1985 – Order entered extending injunction to tax payments made by U.S. Telecommunications and Republic Telecommunications and their customers.

Nov. 22, 1985 – Plaintiffs' motion to join Illinois Bell Telephone Company as a defendant filed.

Nov. 22, 1985 – Plaintiffs' emergency motion for preliminary injunction and creation of a special escrow fund or, in the alternative, for an order that tax payments under the Illinois Tax Act be deemed made under protest, filed.

Nov. 22, 1985 – Response of defendants Department of Revenue and Illinois State Treasurer to plaintiffs' emergency motion for preliminary injunction and creation of a special escrow fund or, in the alternative, for an order that tax payments under the Illinois Tax Act be deemed made under protest, filed.

Nov. 22, 1985 – Verified answer of counter-defendants Illinois Department of Revenue and Illinois State Trea-

surer to verified counterclaim of defendant and counter-plaintiff GTE Sprint Communications Corporation filed.

Nov. 27, 1985 – Intervening petition of Ruppman Marketing Services, Inc. filed.

Nov. 27, 1985 – Class action complaint of intervenor Ruppman Marketing Services, Inc. for declaratory judgment, injunctive relief, accounting and other relief filed.

Dec. 9, 1985 – Emergency motion of counter-plaintiff Satellite Business Systems for a temporary restraining order or preliminary injunction filed.

Dec. 9, 1985 – Answer and verified counterclaim of defendant Satellite Business Systems for injunctive, declaratory and other relief filed.

Dec. 12, 1985 – Illinois Department of Revenue and Illinois State Treasurer's memorandum of law in support of their response to plaintiffs' emergency motion for preliminary injunction and creation of a special escrow fund filed.

Dec. 12, 1985 – Agreed order for preliminary injunction between plaintiffs Jerome F. Goldberg and Robert McTigue and defendants Illinois Department of Revenue and Illinois State Treasurer and defendant American Telephone and Telegraph Company entered, ordering that tax payments by AT&T and its customers are to be maintained in the protest fund, pending final resolution of the lawsuit.

Dec. 13, 1985 – Answer of defendant Illinois Bell Telephone Company filed.

Dec. 18, 1985 – Objections of counter-defendants Illinois Department of Revenue and Illinois State Treasurer to the intervening petition of Ruppman Marketing Services, Inc. filed.

Dec. 20, 1985 – Order for preliminary injunction entered, ordering that tax payments by Satellite Business Systems and its customers are to be maintained in the

protest fund, pending final resolution of the lawsuit.

Dec. 20, 1985 – Order for preliminary injunction entered, ordering that tax payments by American Telephone and Telegraph Company and its customers are to be maintained in the protest fund, pending final resolution of the lawsuit.

Dec. 30, 1985 – Plaintiffs' motion for class certification filed.

Dec. 30, 1985 – Memorandum of law of defendant and counter-plaintiff GTE Sprint Communications Corporation in support of plaintiffs' motion for preliminary injunction filed.

Dec. 30, 1985 – Plaintiffs' reply memorandum in support of their emergency motion for preliminary injunction and creation of a special escrow fund filed.

Jan. 2, 1986 – Response to objections of Illinois Department of Revenue and Illinois State Treasurer to the intervening petition of Ruppman Marketing Services, Inc. filed.

Jan. 10, 1986 – Verified answer of counter-defendants Illinois Department of Revenue and Illinois State Treasurer to verified counterclaim of MCI Telecommunications Corporation filed.

Jan. 10, 1986 – Plaintiffs' response to intervening petition of Ruppman Marketing Services, Inc. filed.

Jan. 10, 1986 – Order of preliminary injunction entered requiring defendants GTE Sprint, Satellite Business Systems, Western Union, Max Long Distance, TMC Long Distance, TDX Systems, Inc., MCI Telecommunications Corp., Inc., ITT, Allnet Dial One Service, Republic Telecom Corp., U.S. Telecom, AT&T, Illinois Bell Telephone Company, and Electronic Office Centers of America, Inc. to remit under protest to the Illinois Department of Revenue all taxes collected by the carriers from their customers pursuant to the Illinois Telecommunications Excise Tax Act, all such tax payments to be placed by the Illinois

Department of Revenue into a special protest fund, to be preserved pending final resolution of the lawsuit.

Jan. 10, 1986 – Order entered denying the intervening petition of Ruppman Marketing Services, Inc.

Feb. 4, 1986 – Response of defendants Illinois Department of Revenue and Illinois State Treasurer in opposition to plaintiffs' motion for class certification filed.

Feb. 26, 1986 – Plaintiffs' reply memorandum in support of motion for class certification filed.

Mar. 4, 1986 – Verified answer of Illinois Department of Revenue and Illinois State Treasurer to the verified counterclaim of Satellite Business Systems for injunctive, declaratory and other relief filed.

Mar. 4, 1986 – Order of preliminary injunction entered requiring defendants GTE Sprint, Satellite Business Systems, Western Union, Max Long Distance, TMC Long Distance, TDX Systems, Inc., MCI Telecommunications Corp., ITT, Allnet Dial One Service, Republic Telecom Corp., U.S. Telecom, AT&T, Electronic Office Centers of America, Inc. and Illinois Bell Telephone Company to remit under protest all taxes collected by the carriers from their customers pursuant to the Illinois Telecommunications Excise Tax Act, all such tax payments to be placed by the Illinois Department of Revenue into a special protest fund, to be preserved pending final resolution of the lawsuit.

Apr. 14, 1986 – Order entered denying class certification.

May 2, 1986 – Motion of counter-defendants Illinois Department of Revenue and Illinois State Treasurer for summary judgment against plaintiffs Goldberg and McTigue and defendant-counter-plaintiff MCI Telecommunications and for partial summary judgment against defendant-counter-plaintiffs GTE Sprint and SBS Skyline filed.

May 23, 1986 – Answer of defendant Republic Telecom Services Corporation filed.

May 23, 1986 – Answer of defendant U.S. Telecommunications Services Company filed.

June 9, 1986 – Memorandum of law in support of defendants-counter-defendants Illinois Department of Revenue and Illinois State Treasurer's motion for summary judgment and for partial summary judgment filed.

July 25, 1986 – Motion of defendant-counter-plaintiff GTE Sprint Communications Corporation for partial summary judgment filed.

July 28, 1986 – Memorandum of law in support of plaintiffs' motion for summary judgment and in opposition to defendants-counter-defendants Illinois Department of Revenue and Illinois State Treasurer's motion for summary judgment filed.

July 28, 1986 – Memorandum of law in support of motion of defendant-counter-plaintiff GTE Sprint Communications Corporation for partial summary judgment filed.

Aug. 11, 1986 – Memorandum of law of defendant-counter-defendant Illinois Department of Revenue in opposition to plaintiffs' and counter-plaintiff's motions for summary judgment filed.

Aug. 25, 1986 – Reply memorandum in support of plaintiffs' motion for summary judgment filed.

Aug. 26, 1986 – Counter-plaintiff GTE Sprint Communications Corporation's memorandum in reply to defendant-counter-defendant Illinois Department of Revenue's memorandum in opposition to its motion for partial summary judgment filed.

Sept. 24, 1986 – Plaintiffs' renewed motion for class certification filed.

Sept. 25, 1986 – Response of defendants Illinois Department of Revenue and Illinois State Treasurer in

opposition to plaintiffs' renewed motion for class certification filed.

Sept. 27, 1986 – Answer of defendant Lexitel Corporation filed.

Oct. 1, 1986 – Plaintiffs' reply memorandum of law in support of their renewed motion for class certification filed.

Oct. 6, 1986 – Defendant Illinois Bell Telephone Company's motion for declaration of rights filed.

Oct. 20, 1986 – Original transcripts of proceedings before Judge Richard L. Curry in the Circuit Court of Cook County, Illinois, Chancery Division, on Jan. 6, 1986, Jan. 10, 1986, Mar. 4, 1986, May 2, 1986, Sept. 16, 1986, Sept. 25, 1986 and Oct. 6, 1986 filed.

Oct. 22, 1986 – Order entered declaring the Illinois Telecommunications Excise Tax Act unconstitutional under the Illinois and U.S. Constitutions and therefore granting plaintiffs' motion for summary judgment; granting defendant-counter-plaintiff GTE Sprint Communications Corporation's motion for partial summary judgment; and denying defendant-counter-defendants Illinois Department of Revenue and Illinois State Treasurer's motion for summary judgment against plaintiffs and counter-plaintiff MCI Telecommunications and for partial summary judgment against counter-plaintiffs GTE Sprint and SBS Skyline. Order also denies plaintiffs' renewed motion for class certification; grants defendants Illinois Department of Revenue and Illinois State Treasurer's motion to stay effectiveness of order pending appeal; and grants motion for declaration of rights by defendant Illinois Bell Telephone Company regarding obligations under certain provisions of the Illinois Tax Act.

Supreme Court of Illinois

Nov. 6, 1986 – Notice of direct appeal to Illinois Supreme Court from Circuit Court's Order of October 22, 1986 declaring Illinois Tax Act unconstitutional, filed by

defendants Illinois Department of Revenue and Illinois State Treasurer.

Dec. 15, 1986 – Plaintiffs' notice of cross-appeal filed.

Dec. 16, 1986 – Order entered granting GTE Sprint Communications Corporation's motion to correct docketing statement and caption.

Feb. 13, 1987 – Brief of appellant Illinois Department of Revenue filed.

Apr. 2, 1987 – Brief of plaintiffs-appellees-cross-appellants Jerome F. Goldberg and Robert McTigue filed.

Apr. 2, 1987 – Responsive brief of counter-plaintiff-appellee GTE Sprint Communications Corporation filed.

Apr. 16, 1987 – Reply brief of defendant-appellant Illinois Department of Revenue filed.

Apr. 21, 1987 – Brief of *amicus curiae* National Tax Payers Union in support of plaintiffs-appellees filed.

May 4, 1987 – Reply brief of plaintiffs-appellees-cross-appellants in support of their cross-appeal filed.

May 28, 1987 – Brief of *amicus curiae* Illinois Municipal League filed.

June 24, 1987 – Order of the Illinois Supreme Court entered, with opinion forthcoming, holding the Illinois Telecommunications Excise Tax Act constitutional and reversing the judgment of the Circuit Court of Cook County, Illinois that the Illinois Tax Act is unconstitutional.

July 15, 1987 – Petition for rehearing of defendant-cross-plaintiff-appellee GTE Sprint Communications Corporation filed with the Illinois Supreme Court.

July 15, 1987 – Motion of defendants-appellants Illinois Department of Revenue and Illinois State Treasurer for entry of an order releasing tax payments held in protest fund.

July 20, 1987 – Defendant-cross-plaintiff-appellee GTE Sprint Communications Corporation's objection to motion for entry of an order authorizing release of tax payments and motion for a stay filed.

July 21, 1987 – Plaintiffs-appellees' objections to defendants-appellants' motion for release of tax payments and motion for appropriate relief filed.

July 27, 1987 – Opinion of Illinois Supreme Court holding Illinois Telecommunications Excise Tax Act constitutional under the Illinois and U.S. Constitutions issued.

July 31, 1987 – Reply of defendants-appellants Illinois Department of Revenue and Illinois State Treasurer in further support of their motion for entry of order releasing tax payments and in opposition to plaintiffs-appellees' motion for appropriate relief filed.

Aug. 17, 1987 – Plaintiffs-appellees' memorandum in support of their objections to defendants-appellants' motion for release of tax payments from protest fund and in support of their motion for appropriate relief filed.

Aug. 17, 1987 – Joint motion and stipulation between defendant-cross-plaintiff-appellee GTE Sprint Communications Corporation and defendant-appellant Illinois Department of Revenue filed, the stipulation agreeing to the withdrawal of GTE Sprint's previously-filed objections and to the substitution of new objections by GTE Sprint to the release of GTE Sprint's or its customers' tax payments or any other payments for which GTE Sprint might be deemed liable.

Aug. 24, 1987 – Defendants-appellants Illinois Department of Revenue and Illinois State Treasurer's objections to plaintiffs-appellees' motion for stay of mandate filed.

Aug. 28, 1987 – Order entered by Illinois Supreme Court, authorizing Illinois State Treasurer to transfer from the protest fund to the general revenue fund of the State of Illinois those tax payments made under the Illinois Tele-

communications Excise Tax Act by AT&T, MCI and Illinois Bell, or their customers, by agreement of AT&T, MCI and Illinois Bell.

Aug. 28, 1987 – Order entered allowing the joint motion and stipulation (filed Aug. 17, 1987) between defendant-cross-plaintiff-appellee GTE Sprint and defendant-appellant Illinois Department of Revenue, and allowing the motion for stay of mandate pending appeal to the United States Supreme Court.

Oct. 5, 1987 – Order entered denying petition for rehearing of defendant-cross-plaintiff-appellee GTE Sprint Communications Corporation.

Supreme Court of the United States

Oct. 26, 1987 – Notice of appeal of plaintiffs-appellees Jerome F. Goldberg and Robert McTigue to the Supreme Court of the United States filed.

Nov. 20, 1987 – Appellants Goldberg and McTigue docket appeal.

Dec. 7, 1987 – Notice of appeal of defendant-cross-plaintiff-appellee GTE Sprint Communications Corporation to the Supreme Court of the United States filed.

Dec. 31, 1987 – Appellant GTE Sprint dockets appeal.

Jan. 29, 1988 – Appellees' Consolidated Motion To Affirm filed.

Feb. 9, 1988 – Appellant GTE Sprint's Brief in Reply to Consolidated Motion To Affirm filed.

Feb. 10, 1988 – Appellants Goldberg and McTigue's Brief in Opposition to Motion To Affirm filed.

Feb. 22, 1988 – Order of the United States Supreme Court, noting probable jurisdiction on appeals of Goldberg, McTigue and GTE Sprint Communications Corporation, and consolidating appeals for review.

LIST OF RECORD ENTRIES AND STATUTES ALREADY INCLUDED IN APPENDICES TO JURISDICTIONAL STATEMENTS

The following opinions, decisions, judgments, orders and statutes have been omitted in printing this Joint Appendix because they appear on the following pages in either the Appendix to the printed Jurisdictional Statement in *Goldberg, et al. v. Sweet, et al.*, No. 87-826 ("Goldberg J.S. App.") or in the Appendix to the printed Jurisdictional Statement in *GTE Sprint Communications Corporation v. Sweet, et al.*, No. 87-1101 ("Sprint J.S. App."), as follows:

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v.

ROGER D. SWEET, Director of the Illinois Department of Revenue, and JEROME COSENTINO, Treasurer of the State of Illinois,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF ILLINOIS

[ORDER NOTING PROBABLE JURISDICTION]
Filed February 22, 1988

APPEAL from the Supreme Court of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, in this Court, probable jurisdiction is noted. This case is consolidated with 87-826, *Jerome F. Goldberg and Robert McTigue* v. *Roger D. Sweet, Director, Illinois Department of Revenue, et al.*, and a total of one hour is allotted for oral argument.